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No. 07-559

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SUPREME COURT, U.S.

In The

# Supreme Court of the United States

AMES RENTAL PROPERTY ASSOCIATION,

*Petitioner,*

vs.

CITY OF AMES, IOWA,

*Respondent.*

**On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa**

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Whether a municipal zoning ordinance which limits the number of unrelated persons who may live together in a single family dwelling violates the Fourteenth Amendment to the United States Constitution.

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## STATEMENT OF THE CASE

The City of Ames, Iowa, has a population of over 50,000 people and is the home of Iowa State University which enrolls over 25,000 students.[1] The City of Ames enacted Chapter 29 of the Ames Municipal Code which is a comprehensive and detailed zoning ordinance which regulates the use of real estate within the City's boundaries. The Ames Municipal Code restricts use of property in areas designated as "Residential Low Density" zones to "primarily single family dwellings." A single-family dwelling is "any building consisting of no more than one dwelling unit, designed for and occupied exclusively by one family." The zoning ordinance further defines "dwelling unit" as "any building or portion thereof which contains living facilities, including provisions for sleeping, eating, meal preparation and a bathroom."

The Ames Rental Property Association (hereinafter "ARPA") is a corporation that is comprised of property owners who independently lease real estate in the City of Ames. The ARPA itself does not collectively own any real estate in the City of Ames, however

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[1] According to the United States Census Bureau the population of Ames in the 2000 United States Census was 50,731. U.S. Census Bureau, *Iowa: 2000 Population and Housing Unit Counts* 69 (July 2003) (available at http://www.census.gov/prod/cen2000/phc-3-17.pdf). The enrollment at Iowa State University has been over 25,000 students for the past ten years and in 2006 the enrollment was 25,462. Iowa State University, *Fact Book 2006-2007* 34 (2007), (available at http://www.iastate.edu/~inst_res_info/FB07files/pdf07/FB07-34.pdf).

individual members of ARPA own property within the designated single family zones.

This case focuses on section 29.201(62) and the City's definition of family which means "[a]ny number of people related by blood, marriage, adoption, guardianship or other duly-authorized custodial relationship" or not more than "three unrelated people."

The City of Ames regularly and consistently enforces violations of more than three unrelated individuals living in a single dwelling in a single-family zoning area. ARPA members, as well as members' tenants, were cited with violating the zoning ordinances for renting houses to more than three unrelated persons.

The ARPA brought a declaratory judgment against the City of Ames in state district court claiming the zoning ordinance, specifically Ames Municipal Code Section 29.201(62), violates the Equal Protection and Taking Clauses of the United States and the Iowa Constitution. The City of Ames filed a motion for summary judgment and the district court granted the City's motion and dismissed ARPA's petition. The district court concluded that the zoning ordinance did not violate the Equal Protection or the Takings Clauses of the United States and the Iowa Constitution. The ARPA appealed the district court's decision to the Iowa Supreme Court asserting the zoning ordinance violated the Equal Protection Clauses of the United States and the Iowa Constitution. The Iowa Supreme Court affirmed the district court

decision in *Ames Rental Property Association v. City of Ames*, 736 N.W.2d 255 (Iowa 2007).

## REASONS FOR DENYING THE PETITION

Petitioners argue that the "traditional family" has changed due to societal and cultural evolution and for that reason this Court should revisit its holding in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536, 39 L.Ed.2d 797 (1974). Petitioners also argue that *Belle Terre* should be reversed because a single-family zoning ordinance that limits the number of unrelated persons who may live together is not rationally related to legitimate governmental objectives. The decision in *Belle Terre* held that a single-family zoning ordinance that limited the number of unrelated persons who may live together was rationally related to legitimate governmental objectives and the reasons behind the holding remain valid and are true today.

### I. The City of Ames ordinance is similar to the Belle Terre ordinance and this Court should follow precedent in upholding its decision in *Belle Terre*.

The present case is the mirror image of *Belle Terre* in which this Court examined and decided the constitutionality of a zoning ordinance that is more restrictive yet squarely on point to the one in the present case. *Village of Belle Terre v. Boraas*, 416 U.S.

1, 94 S. Ct. 1536, 39 L.Ed.2d 797 (1974). This Court summarized the issue and ordinance in *Belle Terre* by stating:

> Belle Terre is a village on Long Island's north shore of about 220 homes inhabited by 700 people. Its total land area is less than one square mile. It has restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses. The word 'family' as used in the ordinance means, '(o)ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.'

*Id.* at 2, 94 S. Ct. at 1537-1538.

In *Belle Terre*, six unrelated college students leased and resided in one house within the village in violation of the village's ordinance. *Id.* at 2-3, 94 S. Ct. at 1538. The owners and three of the tenants brought action to declare the ordinance unconstitutional including a violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 3, 94 S. Ct. at 1538. The Court began by finding that no suspect classes were involved and specifically the ordinance involved no fundamental right guaranteed by the Constitution such as voting, the right of association, the right of access to courts or any rights of

privacy. *Id.* at 7-8, 94 S. Ct. at 1540. Thus, as with other economic and social legislation, the ordinance will withstand scrutiny under the Equal Protection Clause if the law is "reasonable, not arbitrary" and if the ordinance bears "a rational relationship to a (permissible) state objective." *Id.* at 8, 94 S. Ct. at 1540 (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S. Ct. 560, 561, 64 L.Ed. 989 (1920); *Reed v. Reed*, 404 U.S. 71, 76, 92 S. Ct. 251, 254, 30 L.Ed.2d 225 (1971)). Finding the ordinance to be reasonable and rationally related to Belle Terre's objectives, the Court specifically stated:

> [t]he regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; more noise travels with crowds. A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one . . . The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

*Belle Terre*, 416 U.S. at 9, 94 S. Ct. at 1541.

Similar issues to those raised in *Belle Terre* have been addressed in the case of *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 97 S. Ct. 1932, 52 L.Ed.2d 531 (1977). In *Moore*, a local ordinance

prohibited a woman from living with her son and two non-sibling grandsons. *Moore*, 431 U.S. at 496-497, 97 S. Ct. at 1933. The definition of family was challenged as unconstitutional and was found to violate the Due Process Clause of the Constitution. *Moore* is distinguishable from *Belle Terre* on the basis of the language of the zoning ordinances at issue in each case. While the ordinance in *Belle Terre* placed restrictions only on unrelated persons, the ordinance in *Moore* placed burdensome restrictions on related persons, thereby "slicing deeply into the family itself." *Id.* at 498, 97 S. Ct. at 1935. Thus, the *Belle Terre* decision "actually supports the Court's decision [in *Moore*]," because *Moore* stands for the proposition that a "municipality is constitutionally powerless to abridge . . . the freedom of personal choice of related members of a family to live together." *Id.* at 511-512, 97 S. Ct. at 1942 (Brennan, J., Concurring).

Similar to *Belle Terre*, the zoning provision in the present case affects only unrelated occupants as defined by the term "family." As stated by the Petitioner, "[u]nder Belle Terre, the decision of the Iowa Supreme Court should be affirmed." (Pet. Cert. 10). The bases for the zoning ordinance in the present case are similar to those interests found in *Belle Terre* and *Moore*. The City of Ames is attempting to safeguard the compelling interest of family sanctity by adopting its definition of "family." Notably, the City of Ames defines a family to include three unrelated people (thereby accommodating some non-traditional families, those who choose to live with roommates,

and those who choose co-housing options) while at the same time advancing the interests of promoting community, the sanctity of family, and quiet and peaceful neighborhoods. The decision of *Belle Terre* should be followed because similar legitimate interests are present in both cases and these interests are rationally related to the goals of the ordinance.

In discussing the value of precedent, this Court stated that "[t]he obligation to follow precedent begins with necessity, and a contrary necessity marks its outer limit." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 854, 112 S. Ct. 2791, 2808, 120 L.Ed.2d 674 (1992). Furthermore, "the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable." *Id.* When looking at a prior holding, the judgment of the Court "is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case." *Id.* When reexamining a prior holding this Court can look at a variety of factors including:

> whether the rule has proved to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed

> as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed or come to be seen so differently, as to have robbed the old rule of significant application or justification.

*Id.* at 854-855; 112 S. Ct. at 2808-2809 (internal citations omitted).

The Petitioners urge this Court to revisit and reverse *Belle Terre* because societal and cultural changes have occurred and because "societal norms have dramatically changed" since the decision in *Belle Terre*. (Pet. Cert. 12). Although society may be different in some respects today than when *Belle Terre* was decided, the reasons and goals behind the ordinances in the Village of Belle Terre and in the City of Ames remain. Municipalities that have enacted zoning ordinances as those found in the City of Ames and Belle Terre can claim legitimate interests including "promoting the health, safety, morals, or general welfare of the community." *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d 255, 260 (Iowa 2007). Ames has stated several reasons for the ordinance including promotion of sanctity of family, preservation of peaceful neighborhoods with limited congestion and traffic, quiet neighborhoods, low population, limited congestion of motor vehicles and controlled transiency. *Id.* These interests remain today and are very similar to those found in *Belle Terre* over 30 years ago which were found to be legitimate governmental interests rationally related to the zoning ordinance.

## II. A single-family zoning ordinance limiting the number of unrelated persons who may live together is rationally related to legitimate governmental objectives.

When dealing with economic and social legislation, an ordinance or legislation will survive scrutiny under the Equal Protection Clause if the law is "reasonable, not arbitrary" and if the ordinance bears "a rational relationship to a (permissible) state objective." *Belle Terre,* at 8, 94 S. Ct. at 1540 (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S. Ct. 560, 561, 64 L.Ed. 989 (1920); *Reed v. Reed*, 404 U.S. 71, 76, 92 S. Ct. 251, 254, 30 L.Ed.2d 225 (1971)); see also *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440, 105 S. Ct. 3249, 3254, 87 L.Ed.2d 313 (1985) (stating "[w]hen social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude"). Local governments have broad power to zone and control land use and this function is a vital part of achieving a satisfactory quality of life not only in urban, but rural communities as well. *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68, 101 S. Ct. 2176, 2182, 68 L.Ed.2d 671 (1981). The "courts generally have emphasized the breadth of municipal power to control land use and have sustained the regulation if it is rationally related to legitimate state concerns." *Id.*; see also *Cleburne Living Center*, 473 U.S. at 440, 105 S. Ct. at 3254 (stating "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is

rationally related to a legitimate state interest."). With economic and social legislation, "every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function." *Belle Terre*, 416 U.S. at 8, 94 S. Ct. at 1540; see also *Cleburne Living Center*, 473 U.S. at 440, 105 S. Ct. at 3254 (stating "the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.").

The City of Ames has articulated several interests it intended to advance by enacting the zoning ordinance and differentiating between groups of related and unrelated residents of single family dwelling units and those reasons include: "promoting a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency." *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d at 260; see also *Belle Terre*, 416 U.S. at 9, 94 S. Ct. at 1541. The Iowa Supreme Court found Ames's objectives to be valid in stating that there is a legitimate interest for governing bodies to promote and preserve neighborhoods that are conducive to families and that "[q]uiet neighborhoods with a stable population and low traffic are laudable goals." *Ames Rental Prop. Ass'n*, 736 N.W.2d at 260; see also *Dinan v. Board of Zoning Appeals of Town of Stratford*, 595 A.2d 864, 870 (Conn. 1991) (finding that "the police power may be used constitutionally to promote 'family values' and 'youth values' that contribute to creating

'a sanctuary for people.'"); *Town of Durham v. White Enterprises, Inc.*, 348 A.2d 706, 709 (N.H. 1975) (stating the State has an interest "in preserving the integrity of the biological or legal family" and that "this legitimate government purpose justifies the exclusion of a blood related family from the density requirements of the ordinance which applies to an unrelated household.") The Iowa Supreme Court also found that City of Ames's objectives were "rationally related" to the zoning ordinance in question. *Ames Rental Prop. Ass'n*, at 260-263; see *Belle Terre*, 416 U.S. at 9, 94 S. Ct. at 1541 (finding that an ordinance restricting the use of property for use by a single traditional family was a permissible exercise of the legislative line drawing function that falls within the police power); *Jones v. Wildgen*, 320 F.Supp.2d 1116, 1132 (D. Kan. 2004), (holding that an occupancy limit that except for owner-occupancy property, no single family dwelling in a single family zoning district shall be leased for occupancy for more than three unrelated persons who do not constitute a family, "is rationally related to the City's stated purpose of maintaining the single family character of the neighborhood"); *Rademan v. City & County of Denver*, 526 P.2d 1325, 1327 (Colo. 1974) (finding the means of restricting the use of property to single family dwellings to promote family values and create places free from over population and congestion are "reasonably related to the end of planned neighborhood development and prevent the classification from being deemed arbitrary.").

In determining that Ames's objectives were "rationally related" to the zoning ordinance in question, the Iowa Supreme Court stated that more is needed than "imagining extreme examples of groups of people who do or do not offend the goals of the zoning ordinance." *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d at 260. The Iowa Supreme Court went on to state that city council members are permitted to legislate based on real life observations and that the City took into account that Ames was a university campus city. *Id.* at 261. The Iowa Supreme Court held that the City's goals are neither arbitrary nor capricious and that the City made a reasonable policy decision based on students living off campus when it decided to limit the number of unrelated persons who could live together in certain areas. *Id.* The Iowa Supreme Court found that usually unrelated persons have different living styles than related persons; citing that related persons have a more permanent status and spend longer times in one place, whereas unrelated persons living together tend not to establish roots in the community and the arrangements are short term. *Id.* Additionally, the ordinance limiting the number of unrelated persons who may live together furthers the City's goal of creating a family-oriented neighborhood that is both quiet and safe for young children because large numbers of young adults residing together can bring noise, people and additional traffic. *Id.*

The Petitioner argues that Ames's "ordinance is both impermissibly overinclusive and underinclusive

and constitutes an irrational effort to achieve legitimate goals." (Pet. Cert. 19). The legislative process is respected and "the Constitution presumes that even improvident decisions will eventually be rectified by the democratic process." *Cleburne Living Center,* 473 U.S. at 440, 105 S. Ct. at 3254 Generally, judicial intervention is unwarranted "no matter how unwisely we may think a political branch has acted" and thus a statute will not be overturned "unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *Vance v. Bradley,* 440 U.S. 93, 97, 99 S. Ct. 939, 942–943, 59 L.Ed.2d 171 (1979). This Court has stated the Equal Protection Clause will not be violated simply because the classifications made by its laws are imperfect. *Dandridge v. Williams,* 397 U.S. 471, 485, 90 S. Ct. 1153, 1161, 25 L.Ed.2d 491 (1970). If there is a reasonable basis for the classification in the ordinance, the same does not "offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Dandridge,* 397 U.S. at 485, 90 S. Ct. at 1161 (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L.Ed. 369 (1911)). Moreover, "even if a classification is to some extent both underinclusive and overinclusive, and hence the line drawn by Congress imperfect, it is nevertheless the rule that in a case like this 'perfection is by no means required.'" *Vance v. Bradley,* 440 U.S. at 108, 99 S. Ct. at 948 (quoting *Phillips Chemical*

*Co. v. Dumas School District*, 361 U.S. 376, 385, 80 S. Ct. 474, 480, 4 L.Ed.2d 384 (1960)). With economic and social legislation, legislatures have to draw lines and "every line drawn by a legislature leaves some out that might have been included and this determination is a legislative function and not a judicial function." *Belle Terre*, 416 U.S. 8, 94 S. Ct. 1540; see also *Dinan v. Board of Zoning Appeals of Town of Stratford*, 595 A.2d 864, 871 (Conn. 1991) (stating that "restriction of the definition of 'family' to related persons is an exercise in legislative line drawing that serves to provide an element of cohesion." The Court also stated that the fact the "line is imperfect in that it may exclude some unrelated groups that may function in the community in essentially the same manner as traditional family, insofar as zoning objectives are concerned, does not render it invalid.").

There have been a number of state court decisions that have examined similar ordinances to that of Belle Terre under the Equal Protection clause of their own state's constitution. One such example, *State v. Champoux*, 555 N.W.2d 69 (Neb. Ct. App. 1996), is from Lincoln, Nebraska, home of the University of Nebraska, and a town similar to the City of Ames.[2] In

[2] Several of the cases that address ordinances similar to that of Ames involve college towns. See *Anderson v. Provo City Corp.*, 108 P.3d 701 (Utah 2005) (Provo, Utah, location of Brigham Young University); *City of Brookings v. Winker*, 554 N.W.2d 827 (S.D. 1996) (Brookings, South Dakota, location of South Dakota State University); *Town of Durham v. White*

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*Champoux*, the Court of Appeals of Nebraska sustained the validity of an ordinance, similar to that of the City of Ames, which defined a family as including not more than three unrelated persons. *State v. Champoux*, 555 N.W.2d 69, 70 (Neb. Ct. App. 1996). The Court recognized a municipality's authority to regulate residential neighborhoods to promote "sanctity of the family, quiet neighborhoods, low population, few motor vehicles and low transiency." *Id.* at 72. After reviewing decisions of similar jurisdictions, the Court upheld the definition of family and recognized "a municipality's interest in preserving the integrity of residential districts and in fostering a sense of community." *Id.* at 74.

Several other state court decisions have similarly concluded that single family zoning ordinances limiting the number of unrelated persons residing in the same household does not violate the Equal Protection Clause provision of their state's constitution.[3] Also, in

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*Enterprises, Inc.*, 348 A.2d 706 (N.H. 1975) (Durham, New Hampshire, location of the University of New Hampshire).

[3] See *City of Brookings v. Winker*, 554 N.W.2d 827 (S.D. 1996) (ordinance limiting number of unrelated adults who could live together did not violate the due process or equal protection clauses of South Dakota Constitution); *City of St. Joseph v. Preferred Family Healthcare, Inc.*, 859 S.W.2d 723 (Mo. Ct. App. 1993) (holding that the City's exclusion of more than five unrelated individuals in a certain district "bears a rational relation to family needs in terms of how family neighborhoods are structured and the resulting quality of life afforded"); *Dinan v. Board of Zoning Appeals of Town of Stratford*, 595 A.2d 864 (Conn. 1991) (holding a district permitting one-family dwellings

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the federal court case of *Jones v. Wildgen*, 320 F.Supp.2d 1116 (D. Kan. 2004), the constitutionality of an ordinance establishing occupancy limits and regulations on rental properties on areas zoned for single family residences was challenged. The zoning ordinance stated that except for owner-occupancy property, no single family dwelling in a single family zoning district shall be leased for occupancy for more than three unrelated persons who do not constitute a family. *Jones v. Wildgen*, 320 F.Supp.2d 1116, 1120 (D. Kan. 2004). The City of Lawrence advanced reasons for the zoning regulations including an attempt to preserve and sustain the enjoyment of resident and

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to be occupied by any number of those related and up to two roomers in addition to the family did not violate the due process or equal protection clauses of the Connecticut Constitution); *Hayward v. Gaston*, 542 A.2d 760 (Del. 1988) (holding a zoning code that limited the number of unrelated housemates to four not violative of the Equal Protection Clause); *People v. Multari*, 517 N.Y.S.2d 374 (N.Y.S.D. 1987) (ordinance defining "family to include not more than three unrelated persons over 18 years of age sustained); *Town of Durham v. White Enterprises, Inc.*, 348 A.2d 706 (N.H. 1975) (ordinance restricting density of occupancy by unrelated persons while not so restricting that of related persons upheld); *Rademan v. City & County of Denver*, 526 P.2d 1325 (Colo. 1974) (holding that traditional family definitions usually do not violate state due process or equal protection, except when the law would infringe on a fundamental right as in *Moore*); see also *Anderson v. Provo City Corp.*, 108 P.3d 701 (Utah 2005) (holding ordinance a valid exercise of authority and not violative of constitutional right to equal protection which allowed some single-family zones to rent accessory apartments to up to four related or unrelated individuals on condition owner resides in primary dwelling).

single family neighborhoods and to enhance the safety of tenants in those areas. *Id.* at 1131. The court held that the maintenance of the single family character of neighborhoods is a legitimate public interest. *Id.* at 1130.

The Petitioner has cited cases where other states have overturned these types of ordinances. (Pet. Cert. 20–21). Some of the cases that have struck down ordinances which limit the number of unrelated persons who may live together have done so applying other constitutional provisions, addressing an ordinance that is more restrictive than that of *Belle Terre*, or using a heightened level of scrutiny. In *City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal. 1980), the Supreme Court of California found that the zoning ordinance violated inalienable rights as defined by the California Constitution. *City of Santa Barbara v. Adamson*, 610 P.2d 436, 437 (Cal. 1980). Instead of using a rational basis test in determining the validity of the ordinance, the Supreme Court of California found a fundamental right and used a heightened scrutiny test. *Id.* at 442; see also *State v. Baker*, 405 A.2d 368, 369-370 (N.J. 1979) (holding zoning ordinance limiting the number of unrelated persons to not more than four violates the right to privacy and due process under the New Jersey Constitution because the distinction between related and unrelated does not bear a substantial relationship to the effectuation of the city's goal). In *McMinn v. Town of Oyster Bay*, 488 N.E.2d 1240 (N.Y. 1985), a single family zoning ordinance which allowed any number of

related persons to live together or not more than two unrelated persons who both must be 62 years of age or older, was found to violate the due process clause of the New York Constitution. *McMinn v. Town of Oyster Bay*, 488 N.E.2d 1240 (N.Y. 1985); but see *People v. Multari*, 517 N.Y.S.2d 374, 376 (N.Y.S.D. 1987) (New York County Court upheld a city ordinance in light of *McMinn* which limited occupancy of single-family houses and defined family as "[o]ne or more persons occupying a premises and living together as a single housekeeping unit, subject to a limit of not more than three unrelated persons 18 years of age or over." The Court stated in *McMinn* the ordinance faltered by failing to provide in its definition of family alternatives that would allow the inclusion of any number of unrelated persons living together as a functional equivalent of a traditional family.) The ordinance that was challenged in *McMinn* was more restrictive than that of the City of Ames or that in *Belle Terre*. In *Charter Township of Delta v. Dinolfo,* 351 N.W.2d 831 (Mich. 1984) the court held that an ordinance that limited occupation of a single-family residence to two unrelated persons violates the due process clause of the Michigan Constitution but not that of the Federal Constitution. The Court stated this was not a traditional zoning conflict and the task was to evaluate whether the existence of the distinction of the use of one land as opposed to another is permissible and thus the "extraordinary deference given to the line drawing in traditional zoning matters is not appropriate here." *Id.* at 839-840. Subsequent Michigan cases upheld similar zoning ordinances under

constitutional challenge including *Stegeman v. City of Ann Arbor*, 540 N.W.2d 724 (Mich. Ct. App. 1995). The Michigan Court of Appeals distinguished *Stegeman* from *Delta* on the basis that the ordinance in *Delta* only allowed one unrelated person to reside in the household in addition to the family, while the ordinance in *Stegeman* allowed up to six unrelated individuals to reside together in a single-family house. *Stegeman v. City of Ann Arbor*, 540 N.W.2d 724, 726 (Mich. Ct. App. 1995). Another distinction was made in that the ordinance in *Delta* did not provide for a "functional family" of unrelated individuals. *Id.*

The City of Ames ordinance which allows an unlimited number of related persons to live together while limiting the number of unrelated persons to three in single-family zones, is rationally related to the government's interest and accordingly does not offend the Equal Protection Clause of the United States Constitution.

## CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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